

URGENCY OF IMMUNITY RIGHTS INDONESIA'S CORRUPTION ERADICATION COMMISSION (KPK)

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ABSTRACT

This research is a normative legal research. The approach method used in this research is normative juridical. This research is conducted with the study of documentation, namely collecting and researching of legal materials through a search of legal literature based on the act and the related law. This study aims to determine the urgency of whether the leaders of Indonesia's Corruption Eradication Commission (KPK) should be given the Immunity Right in performing their duties. This is due to the many obstacles that hinder the Eradication of Corruption in Indonesia and the alleged criminalization addressed to the leadership of the Corruption Eradication Commission in performing. There are efforts from any parties who continue to encourage and want the KPK leaders to be established as a suspect. This can be politically as well as weakening the KPK institution, which currently plays an important role in eradicating corruption in Indonesia. Given the substance of Article 32 Paragraph (2) of Law Number 30 Year 2002 concerning Corruption Eradication Commission, the appointed leader becomes suspect will be temporarily discharged from his position in addition to performing his duties and functions collectively collegial with the stipulation of some KPK Leaders to be suspects will disrupt this institution in combating corruption. Indonesia as a legal state that upholds the principle of equality before the law and also considers that Indonesia is in an emergency of corruption, the application of limited immunity rights against the KPK Leaders guaranteed in a law is a good way. The eradication of corruption must remain focused so that objectives can be achieved immediately. The sincerity of these steps can be pursued by definite regulation of KPK's immunity right.

KEYWORDS: *Urgency, Immunity Rights & KPK Leaders*

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INTRODUCTION

Nowadays, corruption is one of the crimes of public concern in Indonesia. The criminal act of corruption not only harms the state's finances but also violates the social and economic rights of the people. Helbert Edelherz said the criminal act of corruption as a white-collar crime, which literally defines the illegal deeds that are physically covertly done to earn money or wealth and to avoid paying or spending money or wealth or for gain business and personal gain. As a developing country, Indonesia cannot be separated from corrupt crimes that are considered extraordinary. The effort to curb corruption is inseparable from the predicates of Indonesia, such as the publication containing the corrupt country rating issued by Transparency, which put Indonesia in a low position with the Indonesian Corruption Perceptions Index (CPI) globally ranked 90th. This means that it is still left behind compared to other Asian countries, such as Malaysia (ranked 50) and Singapore (ranked 7) (BBC. com)

The Law on Corruption Eradication that currently prevails in Indonesia is The Act Number 20 of 2001 regarding the amendment to The Act Number 31 of 1999 about the Eradication of Corruption. Accompanied by the establishment of the Corruption Eradication Commission (KPK) based on the Act Number 10 of 2002 about Corruption Eradication Commission.

The state institutions in Indonesia established with the aim of improving the efficiency and effectiveness of efforts to eradicate corruption is the Corruption Eradication Commission (KPK). KPK's overall performance in 2016, KPK conducted 96 investigation activities, 99 investigations, and 77 prosecution activities, both new cases and the rest of the handling of cases in the previous year. In addition, the execution of 81 judicial decisions that have legally binding. More than 497.6 Billion Rupiah has been put into the state treasury from handling cases of corruption (KPK. go. id).

The existence of KPK, also raises some parties who want weakening of institution, and intervenes the institution in eradicating the crime of corruption in progress. This is evidenced by the rise of KPK leaders who have been linked with violations of law. Especially after the Commission determined the Head of the State Intelligence Agency, Budi Gunawan as a suspect, successively three KPK leaders became the target of the police. The first is Bambang Widjojanto who was appointed as a suspect in the case of allegedly false information in front of the dispute of Regional Head Election Kotawaringin Barat, Central Kalimantan, 2010. The second is Adnan Pandu Praja reported on charges of forcibly removing shares owned by Desy Timber Company (PT. Desy Timber), a logging company operating in Berau, East Kalimantan, 2006. At that time, Adnan became the company's legal counsel. The third, Abraham Samad became a suspect in case of alleged forgery of passport-making documents (CNN Indonesia. com).

Article 32 paragraph (2) in the Act about KPK states that a KPK leader may be temporarily dismissed if suspected of committing a criminal act (suspect) and may be dismissed completely if it has been proven in court or already in the category of defendant. Surely this does not provide a definite protection against the leadership of KPK, given its urgent function against the eradication of criminal acts of corruption.

This provision provides an opportunity to some parties who want to divert the issue or intentionally want to weaken the KPK leadership, in the presence of the Article, when the KPK is focused on carrying out its duties, it could be possible the party being investigated by the KPK will use the article to fight the KPK, namely some parties will use various ways to KPK cases, so that the Commission can be made a suspect or defendant, so the case being examined by the KPK would be disrupted. Though KPK has a very heavy task and certainly very important for Indonesia. KPK should have a special protection in carrying out its duties, one of which is given a clear legal certainty against the protection of the KPK. The existence of Article 32 paragraph (2) in the Act about KPK provides an opportunity in the KPK to weaken the KPK, whereas it should be right that the KPK is given the right of immunity in carrying out its duties, where this should be regulated in law. The granting of immunity rights to KPK leader is the only thing that should be granted under the current conditions. The immunity rights or immunity rights is largely a right of liberty over the legal jurisdiction granted to certain parties. There are several types of immune rights, among others (Akanke & Shah, 2010): diplomatic immunity given to the country's diplomatic representative while performing duties in the recipient country. Then, there is a Head of State Immunity given to the head of state for his duties and functions as the head of state. The last known *ratione personae* is the immunity given by the state to someone based on the position of authority or the position it holds in the state.

This study specifically discusses the existence of weakening efforts against the institutions and leaders of the Corruption Eradication Commission by misusing legal procedures, and some parties deliberately create abandonment of

corruption cases in Indonesia. In this regard, one of the efforts to provide a definite legal protection to the KPK is to give the Immunity Rights to the KPK leadership, which should be regulated in Indonesian legislation. Therefore the authors will write about the "Urgency of Immunity Rights Indonesia's Corruption Eradication Commission (KPK)".

Problem Identification

The problems that will be discussed in this paper are:

- Why is there any urgency to grant immunity rights to KPK Leaders during their duties as KPK Leaders?
- How does the academic review of ideas give immunity rights to KPK leaders?

THEORETICAL REVIEW

Judging from the legal terminology the word immunity in English immunity means immunity. Another word is an immunist who states "inviolable." Related to the actions of a person in a certain sphere such as a diplomatic corps or a legislator. The right of immunity or immunity is largely the right of immunity to the jurisdiction of the law granted to certain parties. The Black's Law Dictionary lists legislative immunity which in essence means immunity rights granted by the US Constitution to members of Congress. Firstly, it should not be arrested during court, except for criminal treason, serious crimes such as murder and violation of peace treaties. Secondly, for every speech or debate to be carried out in parliament in order to carry out legislative tasks.

There are several types of immunity rights themselves, this division is also based on whom this right is given to the role, function and position in a government that has a vital function, among others (Whatts,1994):

- Diplomatic immunity is the immunity given to a diplomatic representative of a country while performing its duties in the recipient country. Usually, this right is granted to diplomatic representatives such as Ambassadors, Consulates and other diplomatic representatives.
- Immunity of the head of state is the immunity given to the head of state on the basis of his duties and functions as a head of state. Immunity is given to the head of state because the head of state is an extension of the state. The head of state is a symbol of the sovereign state of the country where he governs or in other words, the head of state is regarded as the state itself.
- Immune *ratione personae* is the immunity that a country gives to a person based on the position or position held in the state.

Several types of immunity rights above, it is most appropriate to be associated with an institution such as the KPK is immunity *ratione personae* which is a characteristic of corruption eradication institution that has an important position to rid the country of corruption.

The regulation on the right of immunity in Indonesia is not new, as it is implicit in the Constitution of article 20 A (3) that members of the Legislative Assembly have the right of immunity which means that their opinions in the meeting should not be considered unlawful even though their opinion is felt to discredit people / certain institutions. In addition to the Legislative Assembly, the Ombudsman of the Republic of Indonesia also has a right of immunity located implicitly in Article 10 of the Ombudsman Act.

RESEARCH METHOD

The research is normative law research. The approach used is the method of juridical normative approach. Normative juridical research is literature research, that research on secondary data (Hanitijo, 1988). The Specification of study is analytical descriptive, the method used to describe an ongoing condition or condition whose purpose in order to provide data about the object of research so as to explore the ideal things, then analyzed based on legal theory or legislation applicable (Ali, 1988).

The research about Urgency of Immunity Rights Indonesia's Corruption Eradication Commission (KPK) in order to optimize the performance of Corruption Eradication Commission conducted by using analytical descriptive, because the author will collect various data related to the title then analyzed according to positive law and related legal theory. In other words, in this study, the authors use the statute approach, conceptual approach, and comparative approach (Mahmud, 2011).

In addition, Data Analysis Methods is descriptive research, meaning by describing or describe the object or data of the results of the research in full in all aspects investigated as a whole and thorough to the problem becomes clear the circumstances and conditions, without drawing conclusions generally accepted. Once described, then will be given the interpretation of the data, facts or problems studied, so that next will be found solutions to solve problems or find a way out if there are obstacles.

The data is obtained through the documentation/literature study, and the data are analyzed qualitatively. Characteristics of qualitative methods is data presented in the form of descriptions in the form of narrative texts, words, phrases, opinions, ideas collected by researchers from several sources in accordance with the techniques or data collection. Then, using a deductive approach to draw conclusions, namely by analyzing data from the general issues, then drawn conclusions that are specific.

RESULTS AND DISCUSSIONS

Urgency to Grant Immunity Rights to the KPK Leaders during their Duties as KPK Leaders

Article 32 Paragraph (2) of Law Number 30 Year 2002 concerning the Corruption Eradication Commission (KPK) is explained: "In the case that the Chairman of the Corruption Eradication Commission becomes a suspect of a criminal offense, is temporarily suspended from office". This means that if the KPK Leader has become a suspect in a criminal act, then he/she must be temporarily discharged from his / her position. This happened to the KPK Leadership in 2015.

This began when the KPK leader was suspected of being a suspect through a woman, Feriyani Lim who was reported to Bareskrim Police Headquarters by the Chairman of the NGO Caring Institute of KPK and Polri, Chairil Chaidar Said. The woman from Pontianak has reportedly falsified the document of the administration of residence when taking care of the passport in Makassar, in 2007. The case was transferred to the Directorate of General Crimes of South Sulawesi Police as per 29 January 2015. Feriyani Lim was appointed as a suspect. On the same day, February 2, 2015, this woman through her legal counsel reported Abraham Samad and someone named Uki to Bareskrim. Then, the police investigator named A. Samad as a suspect after the title at the Police Headquarters of South and West Sulawesi, Monday, February 9, 2015 (Tempo. co). On the same day, the investigator sent a Letter of Notification of the Beginning of Investigation (SPDP) of the case with the chief suspect Feriyani Lim to the High Court of South and West Sulawesi. The case title that decides

the determination of the suspect is a follow-up of the title of the case at Police Headquarters, February 5, 2015. The Abraham Samad case that is suspected of the Criminal Cases of counterfeiting letters and or the administrative offense as referred to in Article 263 paragraph (1) (2) Subsidiary Article 264 paragraph (1) (2) more subsider Article 266 paragraph (1) (2) of the Criminal Code and or Article 93 of Act Number 23 of 2006 concerning Population Administration which has been amended Act Number 24 of 2013 with a maximum imprisonment of eight years with a maximum fine of Rp 50,000,000.

In accordance with the provision of Article 21 of the Act Number 30 of 2002 on the Corruption Eradication Commission, KPK leadership has a strategic role over the working procedures and organization of the KPK. All decisions that occurred in the KPK, based on the leadership of the Corruption Eradication Commission and decided together. In accordance with the General Elucidation in The Act Number 4 of 2009 on Amendment to Act Number 30 of 2009 about the Corruption Eradication Commission, the vacancy of KPK leadership members may disrupt the performance of the KPK and potentially create legal uncertainty in the prevention and eradication of corruption.

In addition, the authors will give suggestions related to anticipation of things that injure law enforcement in Indonesia can be eradicated by giving immunity rights against the leadership of the Corruption Eradication Commission. This is so that the eradication of corruption can run optimally in accordance with the mandate of the provisions of the legislation. Nowadays, the placement of immunity rights as a preventive effort is very appropriate, because in Indonesia itself has been known many institutions that have immunity rights as an example of Article 10 of The Act Number 37 of 2008 on the Ombudsman of the Republic of Indonesia regulates the right of immunity for members of the Ombudsman (Winarso, 2016) as well as Advocates and members of Parliament are guaranteed in a positive law.

By looking into the possibility of the internationally recognized form of immunity, placing the right of KPK Leader's immunity into the category of *ratione personae* is most likely. The reason is that on the type of *ratione personae* is based on the important role of a person in carrying out his duties to a country, given the importance of eradicating corruption in Indonesia then the Leadership Commission can be given the right of immunity. Based on the discussion, the authors concluded that there are efforts to criminalize the leadership of the Corruption Eradication Commission by making a suspect KPK leader over past cases aimed at stopping efforts to eradicate corruption gradually by exploiting the gap of Article 32 paragraph (2) of the Corruption Eradication Commission Law. Thus, the most appropriate effort is to give the right of immunity to the KPK leadership that is limited.

The authors provide the terms and conditions when the immunity right is valid as long as the KPK leadership is still in office and cannot be done a legal effort for him focused on the past criminal acts. However, the Chairman of the Corruption Eradication Commission may be held accountable after the term of office is completed. It is intended that the KPK leadership can be focused in performing the function of eradicating corruption and also be considering the meeting of selection filters conducted by the Committee Team and also fit and proper test by the House of Representatives it is expected that the result of the selection is valid enough to assess the track record of the candidates of KPK Leadership. Furthermore, the KPK when in office will be directly subject to legal liability when caught red-handed conduct of a crime. It aims to uphold the equality before the law principle that no one is immune from the law. So with the suggestion of the authors related to the limited immunity rights owned KPK leaders, is expected to prevent criminalization of the KPK leaders, thus making the path of eradication of corruption in Indonesia optimally.

An Academic Review of the Idea of Granting Immunity Rights to the KPK Leadership

The legal construction of immune rights exists and is embedded in Indonesia's positive law. This is reflected in the provisions contained in the Ombudsman Act, the MD3 Act, and the Advocate Act that implicitly state the right of immunity. For example, the Ombudsman in carrying out its duties and authorities in accordance with the provisions of Article 7 and Article 8 of the Act Number 37 of 2008 regarding the Ombudsman of Republic Indonesia, every member has the right of immunity or the right not to be prosecuted before the court during the course of duty. Basically, every public office in Indonesia has a legal protection, because it is in accordance with the article 50 of the Criminal Code that every person cannot be prosecuted in court if in carrying out the duties on and justified the basis of legislation. Therefore, in criminal law, there is a reason for justification and excuse.

The significance of the right of immunity is not limited to specifics such as admitting and forgiving reasons. The corridors of justification and the reasons for forgiving are limited to the existence of an act of a subject which has been regulated by law can be done. The right of immunity slightly deviates from that provision which means that the impunity given will be slightly deeper than merely a justification and a forgiving excuse (David & Lundman, 1978).

In the legal framework of the grant of immunity the author has several arguments, first, the United Nations Convention against Corruption, Article 37 Paragraph 3 (Article 37 Number 3 of the United Nations Convention Against Corruption, 2003) explains that states should consider "immunity for prosecution" equally substantial in legal investigations. However, it does not apply to those caught red-handed. In accordance with the principle of *pacta sunt servanda* that an international agreement is one of the sources of law, the UN Convention against Corruption Article 37 paragraph 3 is a fairly strong foundation.

"Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offense established in accordance with this Convention."

The Convention has been ratified by Indonesia through The Act No. 7 of 2006 on Ratification of United Nations Convention Against Corruption, 2003 (United Nations Convention against Corruption, 2003). The above proposition makes it clear that the intended immunity rights are valid only as long as the KPK leadership takes office and in the context of the execution of the task. In addition, the right will also be accompanied by an exception, namely when the KPK leaders are caught red-handed.

Thus, the right of immunity to be given to the KPK should be the right of personal immunity, namely the immune right imposed on an official during duty (Immunity *ratione personae*). Second, the right of immunity is a rule that began to grow internationally. For example, the granting of immunities to institutions of corruption eradication has existed in several countries:

- Malaysia has Malaysia Anti Corruption Commission Act 2009 section 72;
- Switzerland has the Prevention of Corruption Act Number 3 of 2006 section 17;
- Zambia has the Anti-Corruption Commission Act Chapter 91;
- Australia, in its Victoria state, the Independent Broad-based Anti-Corruption Commission (IBAC) Act 2011 Number 66 section 193, Immunity of the IBAC and IBAC Offices (Wignjosoebroto, 1955).

Thirdly, the right of immunity has actually existed in Indonesia which is currently owned by members of the Ombudsman and the House of Representatives. The basis of the granting of immunity rights to members of the Ombudsman and the House is very clearly regulated in legislation. If the condition is so, state institutions such as the KPK are also possible to have it. This is as a principle of balancing treatment given to state institutions. Fourth, at least for now, there have been proposals for the granting of limited immunity rights. The limited provision of immunity is intended so that the KPK leadership is not immune from the law forever and provides protection to the KPK leadership at the time of taking office because of its heavy duty. Such proposals include limits on the types of criminal acts (Prasodjo, 2017). The type of crime that is classified as severe, namely a crime that threatens punishment above five years still cannot be given immunity. The arrangement of such matters is the same as the arrangement of the reasons for the dismissal of the president and the interim termination of the DPR as stipulated in the Act Number 40 of 2003. The right of personal immunity is granted to an official during his duty. Immunity is not only inherent when they perform the task, but also when they sit as personal. The legal process is still running, after not serving the leadership of the KPK again. The right of personal immunity may be given to the Leadership of the Corruption Eradication Commission, but is limited by the type of criminal offense that is classified as severe and not applicable if the KPK Leader is caught red-handed in committing the crime.

Therefore, based on the above discussion, the authors conclude that in principle any legal subject, no one has the impunity of the law. All must obey the law. However, the principle of exceptions is exclusively given to State Officials who perform state duties in the public interest. Such exclusions shall be temporary or temporary which shall be interpreted that as long as the State Officer is in the office all legal matters concerning him shall be suspended until his term ends. After the office ends, the right of immunity disappears on its own so that the legal process can proceed as it should. Then related to the placement of immunity rights KPK leaders will be placed on the Corruption Eradication Commission Act by revising through the mechanism of judicial review to the Constitutional Court of the Republic of Indonesia and abolishing the provisions of Article 32 of the Corruption Eradication Commission Act.

CONCLUSIONS

Based on the above discussion it can be concluded as follows

- There is an attempt to criminalize the KPK Leadership by making the suspect KPK leaders over past cases aimed at stopping efforts to eradicate corruption gradually by exploiting the gap of Article 32 paragraph (2) of the KPK Act. Thus, the most appropriate effort is to give the right of immunity to the KPK leadership that is limited. The author provides the terms and conditions when the right of immunity is applicable namely, first, as long as the KPK leadership is still in office, it cannot be done a legal effort for him focused on past crimes. However, the Chairman of the Corruption Eradication Commission may be held accountable after the term of office is completed. It is intended that the KPK leadership can be focused in performing the function of eradicating corruption and also considering the meeting of selection filters conducted by the Panel Team and also fit and proper test by the House of Representatives it is expected that the result of the selection is valid enough to assess the track record of the candidates of KPK Leadership. Second, the KPK leadership when still serving can be directly subject to legal liability when caught red-handed. It aims to uphold the equality before the law principle that no one is immune from the law.
- The legal provisions concerning the right of immunity have actually existed in a positive legal order in Indonesia. This is reflected in the provisions contained in the Ombudsman Act, Parliament Act, Advocate Act and other

laws. Basically every public office in Indonesia has a legal protection, because it is in accordance with the article 50 of the Criminal Code that everyone cannot be prosecuted in court if in performing duties on and justified the basis of legislation. Therefore, in criminal law, there is a reason for justification and excuse. Then the legal framework of the right to immunity is also contained in Article 37 paragraph 3 of the 2003 Convention against Anti-Corruption, essentially that the state should consider the "immunity for prosecution" effort for those who provide substantial cooperation in legal investigations, and that does not apply to those was caught red-handed by a crime which the Convention has been certified by Indonesia through the Act No. 7 of 2006 on the Ratification of the United Nations Convention Against Corruption, 2003. Furthermore, immunity is an internationally developed rule, which in many countries has imposed immunity rights to institutions to eradicate corruption. Therefore, state institutions such as the KPK can also have the right of immunity. The right of immunity is limited. Which means that the KPK leadership is not immune from law forever, where protection is given to the KPK Leadership at the time of serving only, and to the criminal acts committed by the KPK Leaders with the threat of punishment over five years still cannot be given immunity.

RECOMMENDATIONS

The suggestions to be given the author related to the formulation of research problems are as follows:

- Problems related to the criminalization of KPK Leadership are serious issues, therefore giving limited immunity rights is the right choice. KPK received high trust by the community, compared to other law enforcement agencies. Thus, by granting limited immunity rights to KPK leaders, KPK's performance is expected to be more optimal and not hampered by matters outside the law enforcement against corruption.
- Seeing our condition as a legal state that upholds the principle of equality before the law and also considers that the state of Indonesia is in an emergency of corruption, the application of limited immunity rights to KPK leaders guaranteed in a law is the best step. The eradication of corruption must remain focused so that the goal can be achieved immediately, because it will always be difficult in combating corruption without any serious intention from the government. The sincerity of such measures can be pursued by revising the KPK law by abolishing article 32 in the Act about KPK and incorporating a limited immunity substance against its new composition.

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